INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Statement	3
Reasons for granting this writ	13
Appendix No. 1	14
Appendix No. 2	15
Appendix No. 3	16
Appendix No. 4	17

CASES CITED

Twining v. State of New Jersey, 29 S. Ct. 14, 211 U.S. 78, November 1908	5, 8
Mooney v. Holohan, 55 S. Ct. 340, 294 U.S. 103, January 1935	5, 8, 12
Grosjean v. American, 56 S. Ct. 444, 297 U.S. 233, February 1936	5, 7, 8
Smith v. O'Grady, 61 S. Ct. 572, 312 U.S. 329, February 1941	5, 8, 12
Testa v. Katt, 67 S. Ct. 810, 330 U.S. 386, March 1947	5, 9, 12
Mapp v. Ohio, 81 S. Ct. 1684, 367 U.S. 643, October 1961	7, 9
Robinson v. State of California, 82 S. Ct. 1417, 370 U.S. 660, June 1962	7, 9, 11

Opinions below .....

Jurisdiction .....

Questions Presented .....

Statutes Involved .....

Statement .....

Reasons for granting this writ .....

Appendix No. 1 .....

Appendix No. 2 .....

Appendix No. 3 .....

Appendix No. 4 .....

CASES CITE

Twining v. State of New Jersey, 29 S.
211 U.S. 78, November 1908

Mooney v. Holohan, 55 S. Ct. 340, 294
January 1935

Grosjean v. American, 56 S. Ct. 444,
February 1936

Smith v. O'Grady, 61 S. Ct. 572, 312 U.
February 1941

Tesia v. Katt, 67 S. Ct. 810, 330 U.S.
March 1947

Mapp v. Ohio, 81 S. Ct. 1684, 367 U.S.
October 1961

Robinson v. State of California, 82 S. C
370 U.S. 660, June 1962

Gideon v. Wainwright, 83 S. Ct. 792, 372 U. S. 335, March 1963 — 7, 9, 12

Basham v. Pennsylvania, 83 S. Ct. 965, 372 U. S. 699, April 1963 — 7, 9, 12

Mercer v. Theriot, 84 S. Ct. 1157, 377 U. S. 152, June 1964 — 7, 9, 12

Turner v. State of Louisiana, 85 S. Ct. 546, 379 U. S. 466, January 1965 — 7, 10

Pointer v. State of Texas, 85 S. Ct. 1065, 380 U. S. 400, April 1965 — 7, 10, 12

Estes v. State of Texas, 85 S. Ct. 1628, 381 U. S. 532, October 1965 — 7, 10

Miranda v. State of Arizona, 86 S. Ct. 1602, June 1966 — 7, 11

Betts v. Brady, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595 — 7, 12

SUPREME COURT OF THE UNITED STATES

LEONARD J. La HITTE
Plaintiff Appellant
VERSUS
AMERICAN EMPLOYERS INSURANCE COMPANY
Defendants Appellee

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana entered in the above entitled cause on February 3, 1967.

OPINIONS BELOW

This cause was heard by the Civil District Court for the Parish of Orleans, State of Louisiana, Division E, on the 23 rd. day of February, 1966. Judgment rejecting the demands of plaintiff was entered by said Court. Plaintiff being aggrieved by said judgment appealed said judgment to the Court of Appeals, Fourth Circuit, State of Louisiana, No. 3246, which Court, on November 7, 1966 affirmed the judgment of the lower court in part, and reversed in part, the

Gideon v. Wainwright, 83 S. Ct. 792, 37
March 1963

Basham v. Pennsylvania, 83 S. Ct. 965,
April 1963.

Mercer v. Theriot, 84 S. Ct. 1157, 377 U
June 1964

Turner v. State of Louisiana, 85 S. Ct. 5
466, January 1965

Pointer v. State of Texas, 85 S. Ct. 1065,
400, April 1965

Estes v. State of Texas, 85 S. Ct. 1628,
October 1965

Miranda v. State of Arizona, 86 S. Ct. 160

Betts v. Brady, 316 U. S. 455, 62 S. Ct. 1

IN THE

SUPREME COURT OF THE UNITED STATES

NO. _____

MARIE LaHITTE, wife of/and
LEONARD J. La HITTE
Plaintiff Appellant

VERSUS

ACME REFRIGERATION SUPPLIES, INC., AND
AMERICAN EMPLOYERS INSURANCE COMPANY
Defendants Appellee

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF LOUISIANA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana entered in the above entitled cause on February 3, 1967.

OPINIONS BELOW

This cause was heard by the Civil District Court for the Parish of Orleans, State of Louisiana, Divisinn B, on the 23 rd. day of February, 1966. Judgment rejecting the demands of plaintiff was entered by said Court. Plaintiff being agrieved by said judgment appealed said judgment to the Court of Appeals, Fourth Circuit, State of Louisiana, No. 2346, which Court, on November 7, 1966 affirmed the judgment of the lower court in part, and reversed in part, the

SUPREME CO

N

MARIE
LEONA

ACME REFRIG
AMERICAN EM

PETITION FOR

TO THE SUPREME CO

Petitioner prays that a writ of cert
Supreme Court of the State of Loui
February 3, 1967.

OPI

This cause was heard by the Civil
State of Louisiana, Division B, on
rejecting the demands of plaintiff w
agrieved by said judgment appeale
Fourth Circuit, State of Louisiana,
affirmed the judgment of the lower

judgment of the lower Court. An application for writs of certiorari to the Fourth Circuit Court of Appeal were requested of the Supreme Court of the State of Louisiana, who, on February 3, 1967 refused said application for a writ of certiorari.

JURISDICTION

Jurisdiction of this Court is envoked under 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

That Article VII, Section 29 of the Constitution of the State of Louisiana which authorizes appellate review of factual findings of the jury in a civil action, is in violation of the Bill of Rights, particularly the Seventh Amendment to the Constitution of the United States of America, which guarantees to all citizens of the United States of America the right to a trial by jury and that no fact tried by jury, shall be otherwise re-examined in any Court of the United States

STATUTES INVOLVED

Constitution of the United States of America, Section I of the Fourteenth Amendment to the United States Constitution declares;

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article VII of the Bill of Rights of the Constitution of the United States provides:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined by an Court of the United States, than according to the rules of the common law."

judgment of the lower Court. An app

Fourth Circuit Court of Appeal were

State of Louisiana, who, on Februar

writ of certiorari.

JURISDIC

Jurisdiction of this Court is envoked

QUESTIONS PR

That Article VII, Section 29 of the Co

authorizes appellate review of factual

in violation of the Bill of Rights, part

Constitution of the United States of Am

the United States of America the right

jury, shall be otherwise re-examined

STATUTES IN

Constitution of the United States of Am

Amendment to the United States Consti

"All persons born or naturaliz
the jurisdiction thereof, are ci
State wherein they reside. No
shall abridge the privileges or
nor shall any State deprive any
without due process of law; nor
the equal protection of the laws

Article VII of the Bill of Rights of the

"In suits at common law, where
twenty dollars, the right of tria
fact tried by a jury shall be othe
United States, than according to

STATEMENT

Plaintiffs aver that they have been deprived of their right to a trial by jury as guaranteed to them by the Seventh Amendment to the Constitution of the United States which provides for the preservation of trial by jury and further provides that no fact tried by jury shall be otherwise re-examined by any Court of the United States, than according to the rules of the common law.

Here, we have an appellate Court of the State of Louisiana usurping the duties of the jury in reviewing the facts as presented, and finally, making a determination of said facts, stating in its opinion, made a part of this application and marked as Appendix I, Page 12 as follows;

> "Plaintiffs complain of the refusal of the trial judge to give certain special charges and of certain allegedly erroneous charges which were given to the jury. Without discussing the merit of plaintiffs' contention, we must observe that had the jury found as a fact that plaintiffs' driver was not negligent, whether such finding was based on proper or erroneous charges, we, as judges of the fact as well as the law, would have been compelled to hold that manifest error had been committed."

We have stated in the portion of the opinion quoted above the position taken by the appellate Courts of the State of Louisiana in regard to fact findings of jurys, that said fact findings are merely directory and need not be followed by the appellate courts and in fact, may, if it so chooses, substitute its finding of fact for that of the jury's.

In the instant cause the appellate courts of the State of Louisiana went even farther than merely substituting their findings of fact for those of the jury. For in this cause, the jury did not consider the crucial question regarding the negligence of the defendant driver, and the appellate Court

Plaintiffs aver that they have been

as guaranteed to them by the Seve

United States which provides for th

provides that no fact tried by jury

Court of the United States, than ac

Here, we have an appellate Court d

duties of the jury in reviewing the

a determination of said facts, statin

application and marked as Appendix

Plaintiffs complain of the r
special charges and of certa
were given to the jury. With
contention, we must observe
plaintiffs' driver was not neg
on proper or erroneous char
as the law would have been
had been committed."

We have stated in the portion of the

by the appellate Courts of the State

of juries, that said fact findings are

followed by the appellate courts and

stitute its finding of fact for that of t

In the instant cause the appellate cou

even farther than merely substituting

jury. For in this cause, the jury did

regarding the negligence of the defen

Page 3

when it noted this fact, instead of remanding this cause for a trial by jury as demanded by the plaintiffs, made a factual determination as if it were a trier of fact, stating on page 12 of its opinion as follows;

> "Because of its failure to pass on the reconventional demand, it is impossible to determine with any degree of certainty just what the jury did find on the issue of Dawson's negligence. Any finding other than the conclusion we have reached, that Dawson was free of negligence, would likewise be manifestly erroneous and reversible under the facts presented by the record before us."

The plaintiffs in the instant cause demand a trial by jury as guaranteed to them by the Constitution of the United States of America.

The question of the constitutionality of Article VII, Section 29 of the Constitution of the State of Louisiana which provides for appellate review of facts has yet to be refused by this Honorable Court.

That the question regarding the constitutionality of Article VII, Section 29, of the Constitution of the State of Louisiana as it violates the Seventh Amendment of the Constitution of the United States is presently being considered by a three judge court which has been convened as provided for under 28 USCA 2284 in the matter entitled "Mrs. Edith Hill versus The Honorable John J. McKeithen, individually, and in his capacity as Governor of the State of Louisiana, et al, in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, Civil Action No. 6720.

The specially constituted three judge Court has heard arguments, has received a brief from numerous law firms throughout the State of Louisiana and is presently considering the merits of the plaintiff's demands.

when it noted this fact, instead of re

demanded by the plaintiffs, made a

of fact, stating on page 12 of its opin

"Because of its failure to pas
impossible to determine with
jury did find on the issue of
than the conclusion we have
negligence, would likewise be
under the facts presented by

The plaintiffs in the instant cause de
them by the Constitution of the United
The question of the constitutionality o
Constitution of the State of Louisiana
facts has yet to be refused by this Ho
That the question regarding the consti
of the Constitution of the State of Lou
ment of the Constitution of the United
by a three judge court which has been
USCA 2284 in the matter entitled "Mr
John J. McKeithen, individually, and
State of Louisiana, et al, in the Unite
District of Louisiana, Baton Rouge D
The specially constituted three judge
received a brief from numerous law f
Louisiana and is presently considerin

The issues in the instant cause are identical to those presently under consideration by the specially constituted three judge Court in the United States District Court, Eastern District of Louisiana, Baton Rouge Division.

The learned Arthur Cobb of the Baton Rouge Bar, in this memorandum to the Court, presented a clear and concise picture of the jurisprudence of this Honorable Court and of the Courts of the State of Louisiana, which shows beyond question the merit of this cause and we therefore have taken the liberty of quoting from said memorandum the following;

The Supreme Court of the United States in Gideon v. Wainwright, 83 S. CT. 792 stated:

> "Those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment."

On Page 795 of the Gideon decision of the Supreme Court of the United States stated:

> "Explicitly recognized to be of this "fundamental nature" and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances. For the same reason, though not always in precisely the same terminology, the Court has made obligatory on the States the Fifth Amendment's command that private property shall not be taken for public use without just compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment."

The court further stated that a provision of the Bill of Rights which is "fundamental and essential" to a fair trial is made obligatory upon the States by the Fourteenth Amendment. The question here is whether or not the rights guaranteed by the Seventh Amendment are "fundamental and

The issues in the instant cause are

eration by the specially constituted

District Court, Eastern District of

The learned Arthur Cobb of the Bato

Court, presented a clear and concis

Honorable Court and of the Courts o

beyond question the merit of this cau

of quoting from said memorandum th

The Supreme Court of the United Sta

stated:

"Those guarantees of the Bill
guards of liberty immune fro
protected against state invasi
Fourteenth Amendment."

On Page 795 of the Gideon decision o

stated:

"Explicitly recognized to be o
fore made immune from state
part of it, are the First Amen
religion, assembly, associati
grievances. For the same rea
the same terminology, the Co
the Fifth Amendment's comma
taken for public use without ju
ment's prohibition of unreaso
Eighth's ban on cruel and unu

The court further stated that a provis

"fundamental and essential" to a fair

by the Fourteenth Amendment. The

rights guaranteed by the Seventh Am

and essential". The court in the Gideon case quoted from Grosjean v. American Press Co., 297 U.S. 233, 243-244 56 S. Ct. 444, 446, 80 L. Ed. 660 (1936), as follows:

> "We conclude that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution." (Emphasis supplied).

In reversing and casting out the old landmark case of Betts v. Brady, 316 U.S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595, the Supreme Court of the United States stated:

> "In returning to these old precedents, sounder we believe than the new, we but restore constitutional principles established to achieve a fair system of justice."

Article VII of the Bill of Rights of the United States Constitution provides:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined by any Court of the United States, than according to the rules of the common law."

Section 1 of the Fourteenth Amendment to the United States Constitution declares:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Justice Black, as the organ of the Court in the Gideon case, pointed out that the guarantees of the Bill of Rights, which are fundamental safeguards

and essential". The court in the Gide

American Press Co., 297 U. S. 233,

660 (1936), as follows:

"We conclude that certain fund
first eight amendments agains
against state action by the due
Amendment, and among them t
to the aid of counsel in a crimi
(Emphasis supplied).

In reversing and casting out the old law

U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595

States stated:

"In returning to these old prece
new, we but restore constitution
a fair system of justice."

Article VII of the Bill of Rights of the U

"In suits at common law, where
exceed twenty dollars, the right
and no fact tried by a jury shall
Court of the United States, than
common law."

Section 1 of the Fourteenth Amendment

declares:

"All persons born or naturalized
to the jurisdiction thereof, are c
the State wherein they reside. N
law which shall abridge the priv
the United States; nor shall any
liberty, or property, without du
person within its jurisdiction the

Justice Black, as the organ of the Court

that the guarantees of the Bill of Rights

of liberty, immune from federal abridgement, are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. He declared that the freedoms of speech, press, religion, assembly, association, petition for redress of grievances, the command that private property shall not be taken for public use without just compensation, the prohibition of unreasonable searches and seizures, the ban on cruel and unusual punishment, and the right of all defendants in criminal prosecution to assistance of counsel for their defense, are explicitly recognized to be of this "fundamental nature" and, therefore, made immune from state invasion by the Fourteenth Amendment.

Petitioners rely on the following United States Supreme Court cases:

Twining v. State of New Jersey, 29 S. Ct. 14, 211 U.S. 78, November 1908

Mooney v. Holohan, 55 S. Ct. 340, 294, U. S. 103, January 1935

Grosjean v. American, 56 S. Ct. 444, 297 U. S. 233, February 1936

Smith v. O'Grady, 61 S. Ct. 572, 312 U. S. 233, February 1936.

Testa v. Katt, 67 S. Ct. 810, 330 U. S. 386, March, 1947

Mapp v. Ohio, 81 S. Ct. 1684, 367 U. S. 643, October 1961

Robinson v. State of California, 82 S. Ct. 1417, 370 U. S. 660, June 1962

Gideon v. Wainwright, 83 S. Ct. 792, 372 U. S. 335, March 1963

Basham v. Pennsylvania, 83S. Ct. 965, 372 U. S. 335, March 1963

of liberty, immune from federal abrid
state invasion by the Due Process Cla
He declared that the freedoms of spee
association, petition for redress of g
property shall not be taken for public
prohibition of unreasonable searches an
unusual punishment, and the right of a
to assistance of counsel for their dete
of this "fundamental nature" and, ther
invasion by the Fourteenth Amendment
Petitioners rely on the following Unite

Twining v. State of New Jersey
211 U. S. 78, November 1908

Mooney v. Holohan, 55 S. Ct.
January 1935

Grosjean v. American, 56 S. C
February 1936

Smith v. O'Grady, 61 S. Ct. 572
February 1936

Testa v. Katt, 67 S. Ct. 810, 3
March, 1947

Mapp v. Ohio, 81 S. Ct. 1684, 3
October 1961

Robinson v. State of California
370 U. S. 660, June 1962

Gideon v. Wainwright, 83 S. Ct.
March 1963

Basham v. Pennsylvania, 835.
March 1963

Mercer v. Theriot, 84 S. Ct. 1157, 377 U. S. 152, June 1964

Turner v. State of Louisiana, 85 S. Ct. 546, 379 U. S. 466, January 1965.

Pointer v. State of Texas, 85 S. Ct. 1065, 380 U. S. 400, April 1965.

Miranda v. State of Arizona 85 S. Ct. 1602, June 1966.

Estes v. State of Texas, 85 S. Ct. 1628, 381 U. S. 532, October 1965.

In 1908 in Twining the Supreme Court stated, It is possible that some of the personal rights safeguarded by the first Eight Amendments against national action may also be safeguarded against state action because a denial of them would be a denial of due process of law."

In 1935 in Mooney the Supreme Court stated that the obligation to guard and enforce every right secured by Federal Constitution rests on state courts equally with federal courts.

In 1936 in Grosjean the Supreme Court states that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process clause of the Fourteenth Amendment.

In 1941 in Smith v. O'Grady, the Supreme Court Stated that the Federal Constitution is the "supreme law of the land", and the obligation to guard and enforce every right secured by that constitution rests on the state courts equally with the federal courts.

Mercer v. Theriot, 84 S. Ct. [illegible]
June 1964

Turner v. State of Louisiana, 8[illegible]
January 1965.

Pointer v. State of Texas, 85 S.[illegible]
April 1965.

Miranda v. State of Arizona 85 S[illegible]

Estes v. State of Texas, 85 S. C[illegible]
October 1965.

In [illegible] Twining the Supreme Court sta[illegible]
the personal rights safeguarded by the fi[illegible]
national action may also be safeguarded [illegible]
denial of them would be a denial of due pr[illegible]

In 1915 in Mooney the Supreme Court sta[illegible]
and enforce every right secured by Fede[illegible]
courts equally with federal courts.

In 1936 in Grosjean the Supreme Court sta[illegible]
rights, safeguarded by the first eight am[illegible]
were also safeguarded against state actio[illegible]
Fourteenth Amendment.

In 1941 in Smith v. O'Grady, the Supreme [illegible]
Constitution is the "supreme law of the la[illegible]
and enforce every right secured by that c[illegible]
equally with the federal courts.

In 1947 in Testa the Supreme Court stated that the United States Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people , anything in the constitution or laws of any state to the contrary notwithstanding.

In 1961 in Mapp the Supreme Court states that the Fourth Amendment's right of privacy is enforceable against the states through the Due Process Clause of the Fourteenth Amendment, since this is a freedom "implicit in the concept of ordered liberty."

In 1962 in Robinson the Supreme Court held that the Eighth Amendment's prohibition on cruel and unusual punishment is applicable to the states.

In March 1963 in Gideon the Supreme Court stated that where provision of the Bill of Rights of the Federal Constitution is fundamental and essential to a fair trial, then it is made obligatory on the states through the Fourteenth Amendment.

In April 1963 in Basham the Supreme Court reinstated a jury judgment predicated on very slight evidence. Mr. Justice Harlan in his dissent stated that the majority opinion held that "anything a jury says goes".

In 1964 in Mercer the Supreme Court reversed the Court of Appeals and allowed the verdict of a civil jury to stand even though the case was based completely on circumstantial evidence when the Fifth Circuit of Appeals had felt that the defendant was convicted on "rumor and hearsay".

In 1947 in Testa the Supreme Court sta

and the laws passed pursuant to it are

alike upon states, courts, and the peopl

of any state to the contrary notwithstan

In 1961 in Mapp the Supreme Court sta

of privacy is enforceable against the st

of the Fourteenth Amendment, since th

of ordered liberty.

In 1962 in Robinson the Supreme Court

prohibition on cruel and unusual punish

In March 1963 in Gideon the Supreme Co

of the Bill of Rights of the Federal Con

to a fair trial, then it is made obligator

Amendment.

In April 1963 in Basham the Supreme C

predicated on very slight evidence. Mr

that the majority opinion held that "any

In 1964 in Mercer the Supreme Court re

allowed the verdict of a civil jury to sta

completely on circumstantial evidence

felt that the defendant was convicted on

In January 1965 in Turner, a Louisiana case that went to the Supreme Court of the United States, wherein the Supreme Court held that a right to a jury trial in a criminal case in Louisiana guarantees that there will be a fair jury trial by a panel of impartial and indifferent jurors and that the State of Louisiana had failed to accord the accused a fair jury trial and that this violated the minimal standard of due process under the Fourteenth Amendment of the Constitution of the United States and that a fair trial in a fair tribunal is a basic requirement of due process under the Fourteenth Amendment to the Constitution of the United States.

In April 1965 in Pointer the Supreme Court held that the Fifth Amendment's guarantee against self incrimination is made applicable to the states through the Fourteenth Amendment. The court also held that the Sixth Amendment's right of an accused to be confronted with witnesses against him is a fundamental right and is made obligatory on the states through the Fourteenth Amendment. The court went further to say that a state denying these fundamental rights amounts to a denial of the Fourteenth Amendment's guarantee of due process of law. Mr. Justice Black went so far as to state:

> "The fact that this right appears in the Sixth Amendment of our Bill of Rights reflects the belief of the Framers of those liberties and safeguards that confrontation was a fundamental right essential to a fair trial in a criminal prosecution."

In October 1965 in Estes the Chief Justice of the Supreme Court of the United States in his concurrent opinion, answering the trial judge's remarks that the case was not being tried under the federal constitution but under the State laws and constitution, declared:

In January 1965 in Turner, a Louisia

of the United States, wherein the Sup

in a criminal case in Louisiana guara

a panel of impartial and indifferent ju

failed to accord the accused a fair jur

standard of due process under the Fou

of the United States and that a fair tri

ment of due process under the Fourte

the United States.

In April 1965 in Pointer the Supreme C

guarantee against self incrimination is

the Fourteenth Amendment. The court

right of an accused to be confronted wi

mental right and is made obligatory on

Amendment. The court went further to

fundamental rights amounts to a denial

guarantee of due process of law. Mr.

"The fact that this right appear
Bill of Rights reflects the belie
and safeguards that confrontati
to a fair trial in a criminal pro

In October 1965 in Estes the Chief Just

States in his concurrent opinion, answe

the case was not being tried under the

laws and constitution, declared:

"I find it difficult to believe that this trial judge, with over 20 years experience on the bench, was unfamiliar with the fundamental duty imposed on him by Article VI of the Constitution of the United States:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the Judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

In 1966 in Miranda the Supreme Court stated that there were rights secured by Constitution of the United States are involved, there can be no rule making or legislation which would abrogate them by the states. In a preferential appearance of the right in the Bill of Rights reflects a belief by the framers that those liberties and safeguards that were most fundamental be placed first, then the framers of the Constitution of the United States believed that the rights guaranteed by the Seventh Amendment to the Constitution were more fundamental than the immunities guaranteed by the Eighth Amendment. The Supreme Court of the United States has already held in the Robinson case that the Eighth Amendment does apply to the States through the Due Process Clause of the Fourteenth Amendment. In fact, Mr. Justice Goldberg in his concurring opinion in the Pointer case made it amply clear that he believed the same as Mr. Justice Black, that the guarantees of the first eight amendments of the Constitution of the United States are incorporated through the Due Process Clause of the Fourteenth Amendment and therefore obligatory on the States.

"I find it difficult to believe that t
experience on the bench, was unfa
imposed on him by Article VI of t

"This Constitution, and the Laws
made in Pursuance thereof; and al
made, under the Authority of the
law of the Land; and the Judges in
anything in the Constitution or Law
withstanding."

In 1966 in Miranda the Supreme Court stat
by Constitution of the United States are inv
making or legislation which would abrogate
In a preferential appearance of the right in
belief by the framers that those liberties a
fundamental) be placed first, then the fram
States believed that the rights guaranteed b
Constitution were more fundamental than th
Eighth Amendment. The Supreme Court of
in the Robinson case that the Eighth Amend
through the Due Process Clause of the Fou
Mr. Justice Goldberg in his concurring opi
it amply clear that he believed the same as
guarantees of the first eight amendments of
States are incorporated through the Due Pr
Amendment and therefore obligatory on the

The Supreme Court has held in Mercer v. Theriot, and in the Basham case, that what the jury says goes as long as there is a fair trial. The right to trial by jury is considered by the Supreme Court to be a fundamental right essential to ordered liberty. The rights guaranteed by the Seventh Amendment are basic and fundamental rights guaranteed by the Bill of Rights and are applicable to the States.

The anti-Fourteenth Amendment cases stacked up on Walker v. Sauvinet were felled along with Betts v. Brady by Gideon and Pointer.

The United States Constitution is the supreme law of the land, binding alike upon states, courts and the people, anything in the constitution or laws of any state to the contrary notwithstanding.

Testa v. Katt, 330 U. S. 386, 391, 67 S. Ct., 810, 813. The obligation to guard and enforce every right secured by that constitution rests upon the state courts equally with the federal courts. Mooney v. Holohan, 294 U.S. 103, 113, 55 S. Ct. 340, 342; Smith v. O'Grady, 312 U. S. 329, 331, 61 S. Ct. 572, 573.

The Supreme Court has held in Mercer v.

that what the jury says goes as long as ther

by jury is considered by the Supreme Court

to ordered liberty. The rights guaranteed by

basic and fundamental rights guaranteed by

applicable to the States.

The anti-Fourteenth Amendment cases stac

were tailed along with Betts v. Brady by Gid

The United States Constitution is the supren

alike upon states, courts and the people, any

laws of any state to the contrary notwithstand

Testa v. Katt, 330 U. S. 386, 391, 67 S. Ct.

to guard and enforce every right secured by t

the state courts equally with the federal court

294 U.S. 103, 113, 55 S. Ct. 340, 342; Smith v

331, 61 S. Ct. 572, 578.

REASONS FOR GRANTING THIS WRIT

It is respectfully submitted that this Court, regardless of the position taken by the three judge court in the matter presently pending in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, must make a determination of the issues presented in this cause, and therefore, it is respectfully suggested that this instant matter be held in abeyance by this Honorable Court pending the receipt of that cause presently pending in the United States District Court, Eastern District of Louisiana, Baton Rouge Division, or, in the alternative, that this Honorable Court consider the issues as presented by applicant and declare those acts of the State of Louisiana that are in conflict with the Seventh Amendment of the Constitution of the United States be declared invalid in order that the citizens of this State of Louisiana be granted their right to a real and full trial by jury.

Petitioner is of the opinion that they have exhausted every legal means short of this petition for certiorari.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully Submitted

Frank S. Bruno
1115 Richards Building
New Orleans, Louisiana

REASONS FOR GRANTING T

It is respectfully submitted that this Court,

taken by the three judge court in the matter

United States District Court, Eastern Distric

Division, must make a determination of the

and therefore, it is respectfully suggested th

in abeyance by this Honorable Court pending

presently pending in the United States Distri

Louisiana, Baton Rouge Division, or, in the

Court consider the issues as presented by ap

of the State of Louisiana that are in conflict w

of the Constitution of the United States be de

citizens of this State of Louisiana be granted

trial by jury.

Petitioner is of the opinion that they have exh

short of this petition for certiorari.

CONCLUSION

For the foregoing reasons this petition for a w

granted.

Re

Pr

Ill

No

CERTIFICATE

I certify that I have served a copy of the foregoing petition for Certiorari upon F. Lozes of Drury and Lozes, Attorneys for defendants, by depositing the same in a United States Post Office with First Class Mail postage prepaid addressed to them in the National Bank of Commerce Building, New Orleans on this the 2nd. day of May, 1967.

Frank S. Bruno